

# The infusion of sustainability into bilateral fisheries agreements with developing countries: The European Union example

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## Abstract

The EU's bilateral fishing policy towards developing third countries has evolved over the years to increasingly emphasise sustainability, culminating in 2002 with the release of a 'fisheries partnership approach'. The Community has begun to operationalise the policy in various West African coastal states, where its new fisheries partnership agreements are intended to function as 'development vectors'. This paper introduces the EU's new policy, examines its potential implications for the role of sustainability in future bilateral fishing relations and highlights the impetus for it with reference to analysis of the EU's most recent agreement with Senegal based on empirical research.

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## 1. Introduction

In 2002 the European Union (EU) released a new external fisheries policy, which promotes a pro-active emphasis on sustainability in bilateral fisheries relations between the Community and developing third countries.<sup>1</sup> Specifically, the new policy endorses a fisheries partnership approach in terms of which 'fisheries partnership agreements' (FPAs) are promoted as development vectors in the respective coastal states' fisheries. From 2003, the new policy was incrementally implemented and now expressly underpins current bilateral fisheries agreements between the EU and certain West African coastal states, such as Morocco. The necessity for introducing this new approach lies in the failings of earlier bilateral fisheries agreements to adequately protect and promote sustainable fishing in the respective developing third countries' waters. This is evidenced by the illustrative example of past EU-Senegalese

fisheries agreements, which I refer to in this article in the context of discussing the impetuses for as well as the content and potential ramifications of the EU's new external fisheries policy towards developing third countries.

## 2. The history and evolution of 'sustainability' as an influence in the EU's bilateral fisheries policy towards developing coastal states

The EU's policy regulating its fishing in developing third country waters forms part of its external fisheries policy, one 'pillar' of the modern five-legged common fisheries policy (CFP).<sup>2</sup> Established in 1970 on the basis of the treaty provisions creating a common agricultural policy [1],<sup>3</sup> the original CFP made no mention of an external

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<sup>1</sup>Third countries' is a term used in the Treaty Establishing the European Economic Community (Treaty of Rome) (adopted 24 March 1957, entered into force 1 January 1958) 298 UNTS 11 and in Community documents. It is not legally defined but simply put, refers to countries that are not member states of the European Union.

<sup>2</sup>The modern CFP comprises five 'pillars', namely: a conservation and management policy, a fisheries structural policy, the common organisation of fisheries markets, an external policy (international fisheries relations sphere), and a monitoring and inspection policy.

<sup>3</sup>'Agricultural products' are defined as '... the products of the soil, of stock-farming and of fisheries and products of first-stage processing directly related to these products' (art 32(1) ex art 38(1)). Article 3(1)(e) EC Treaty cites Community activities as including a common policy in fisheries.

pillar—its initial goals reflected the predominant economic ambitions of the (then) European Economic Community (EEC), namely to create a robust Community fishing industry, increase fisheries productivity and establish a common Community market in fish and fish products [1–3]. The founding components of the CFP were thus a common organisation of the market in fishery products and a common structural policy for the fishing industry [4,5].

The common organisation of the market was established to stabilise the prices of fisheries products and to ensure coherence between supply and demand. To these ends, the CFP provided for the introduction of market organisation measures establishing common marketing standards for fresh fish products with regard to quality, packaging and labelling, introducing a price support system based on financial intervention mechanisms and regulating fisheries trade with non-Community countries [6]. Neither this policy nor the structural policy paid particular attention to fisheries conservation or sustainability concerns at this early stage; the adverse impact of the structural policy in particular on the sustainability of Community fishing soon became evident, however. The structural policy focused on increasing the catch levels of the Community fleet and provided for substantial investment to this end—Community subsidisation was directed primarily at fleet renewal and modernisation throughout the 1970s, resulting in a steady increase in Community fishing capacity [7–10].<sup>4</sup> As the structural policy did not regulate the relationship between fleet capacity and resource availability, however, over-capacity became a growing problem which threatened to adversely affect the long-term sustainability of Community fish stocks [11,12].<sup>5</sup> The Community responded in the early 1980s by imposing restrictions on the expansion of capacity; at around the same time, fisheries conservation measures were included in the CFP to supplement the structural policy.

In 1983, the Community introduced a fisheries conservation and management system aimed at

... ensur[ing] ... the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions ... [13]

The policy suggested conservation measures to these ends including the restriction of fishing effort (particularly by limiting catches), the regulation of fishing gear and the

establishment of minimum standards for fish size and weight [13]. The cornerstone of the new conservation policy was the Council's capacity to annually determine the total allowable catch (TAC) of commercially exploitable species in Community waters and to allocate portions (quotas) of the TAC to individual member states [13,14]. The introduction of these conservation measures coincided with broader developments in the Community towards environmental regulation.

While the founding treaties of the EEC made no mention of the environment, Community concern for environmental matters grew over the years. In 1987, the Single European Act introduced a legal basis for a Community environmental policy and simultaneously imposed an obligation on the Community to ensure that 'environmental protection requirements [were] a component of the community's other policies' [15]. This 'integration' obligation was strengthened in the subsequent 1992 Treaty on European Union, which required Community institutions and member states to integrate environmental protection 'into the definition and implementation of other Community policies' [16,17]. At the same time, the Treaty located environmental protection within broader sustainability concerns (albeit with a strong development gloss), providing that

[t]he Community shall have as its task ... to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment [16].

Integration thus emerged in the EU as a guiding paradigm as well as a procedural tool, reflecting the importance of the principle in the international arena as emphasised in the 1992 Rio Declaration and Agenda 21 [18]. Rooted in the recognition of the interdependency of the social, economic and biological aspects of sustainability, it obliges the Community to devise and implement means to achieve an effective balance between these objectives in all spheres towards the overall goal of sustainable development.

In Community fisheries, integration efforts were, however, fraught and progress towards the effective accommodation of environmental and sustainability concerns was slow. Despite the introduction of conservatory measures into the CFP in 1983, the 1992 review of the policy revealed that it had failed to stem the decline of key Community fish stocks and to prevent the growing over-capacity of the Community fleet [19–21]. The TAC system was identified as a particularly problematic element of the conservation policy. It was—and continues to be—criticised on the grounds that it is based on inadequate scientific data,<sup>6</sup> TACs are determined for only a small percentage of the species harvested in Community waters

<sup>4</sup>The term 'Community fleet' is used regularly in Commission communications and proposals concerning fisheries and I have used it throughout this paper. The term is not legally defined, but the meaning of 'Community fishing vessel' is identified as 'a fishing vessel flying the flag of a Member State and registered in the Community'. I use the term 'Community fleet' to refer collectively to fishing vessels operating under the flags of coastal Member States and registered in the Community.

<sup>5</sup>Over-capacity is the excess potential fishing ability of a fleet above what is required to harvest the desired catch at the lowest cost. It is a major contributing factor to over-fishing ([12], p. 53).

<sup>6</sup>The majority of the TACs set by the Council are 'precautionary', meaning that they are determined on the basis of limited scientific information. Relatively few 'analytical' TACs are established, that is

(leaving the remaining stock unregulated) and are established on a single-species basis (despite the fact that most targeted stocks occur in mixed fisheries) [12,14], and member states are known to use their political influence to persuade the Council to set TACs in excess of scientific recommendations, thereby contributing to over-fishing [14,22,25]. The principle of ‘relative stability’, which guides the Council’s allocation of portions of the TACs to individual member states, exacerbates this tendency.<sup>7</sup> The TAC and quota system arguably also contributes to fleet over-capacity as well as to high discard rates in Community waters, which adversely affect the marine environment and contribute towards inaccurate fish mortality figures [14,25,26].

The review of the CFP exposed these and other weaknesses of the conservation system. A new guiding framework for Community fisheries management was consequently introduced. It was rooted in the principle of sustainability and pledged to promote the

protect[ion] and conserv[ation of] available and accessible living marine aquatic resources, and to provide for rational and responsible exploitation on a sustainable basis, in appropriate economic and social conditions for the sector, taking account of its implications for the marine eco-system ... [27]

The new policy largely stuck to traditional fisheries regulatory methods, such as rigid control of technical matters, however, when what was required was instead a fresh approach to managing the sector. The impetus for such a new approach came from amendments to the EC Treaty in the late 1990s.

In 1997, the Treaty of Amsterdam elevated environmental protection to a guiding objective of the EU alongside sustainable development [28–30]. In terms of the revised EC Treaty, key tasks of the Community include

promot[ing] throughout the Community a harmonious, balanced and sustainable development of economic activities ... [and] a high level of protection and improvement of the quality of the environment [1]

Integration was identified as the means to achieve sustainable development

[e]nvironmental protection requirements must be integrated into the definition and implementation of the

Community policies and activities ... in particular with a view to promoting sustainable development [1]

In an attempt to drive the integration process forward, the Commission released an ‘integration strategy’ in 1998, which was subsequently adopted by the Council and served as a reference point for integration initiatives in the various Community sectors including fisheries [31]. The EU’s 2001 sustainable development strategy went a step further, obliging the Council to develop sectoral strategies to integrate environmental concerns into all Community policy areas with a view to implementation as soon as possible. In fisheries, the strategy emphasised the need to improve fisheries management in order to reverse the decline in key stocks and to ensure sustainable fisheries and marine ecosystem management within Community waters and beyond [32].

The 2002 review of the CFP nevertheless revealed the policy’s continued failure to successfully accommodate environmental protection into Community fisheries and to address sustainability concerns [23]. Specifically, the Commission noted the ‘alarming’ state of Community fish stocks, the excessive fishing capacity of the Community fleet and the poor record of control and enforcement in EU fisheries, concluding that

... [t]he current poor sustainability performance of the CFP proves that many of the instruments applied over the last twenty years have reached their limits. In this state of crisis there is a need for major change. Reform of the objectives, principles, priorities and instruments of the CFP is more than ever necessary to deliver sustainable development ... [24]

Change was initiated through a number of key legislative and policy reforms including new regulations in the conservation and structural sphere and a new distant water fishing strategy.

Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries introduced the new (current) objective of the CFP providing for:

... [the] sustainable exploitation of living aquatic resources ... in the context of sustainable development, taking account of the environmental, economic and social aspects in a balanced manner [33].

‘Sustainable exploitation’ refers to

... the exploitation of a stock in such a way that the future exploitation of the stock will not be prejudiced and that it does not have a negative impact on the marine eco-system [33]

The regulation requires the Council to progressively promote the implementation of an ecosystems-based approach to fisheries management and to adopt new measures to achieve sustainable fisheries exploitation, taking account of available scientific, technical and economic advice and applying a precautionary approach

(footnote continued)

TACs derived from analyses of ‘sufficient’ scientific data ([14], p. 236, [12], p. 38, [39,20], p. 17, [22], para 1.3 (fn 5), [23], para 3.1.2, [24], para 3.1).

<sup>7</sup>The principle, which was introduced to promote stability in member states’ fishing industries and to avoid protracted annual negotiations on allocations, guarantees each member state a specific percentage of the TAC for each species based on their original ‘reference allocation’ in the 1983 quota distributions. This approach is inflexible and is therefore arguably un conducive to promoting sustainable fishing as it is unable to respond effectively to changes in the status of fish stocks ([12], p. 39, [25], pp. 314–15, [14], p. 236).

[23,24,33]. While it retains the TAC and quota system, together with the ‘relative stability’ principle, these are supplemented with a broader, more flexible multi-annual management approach which is expressly aimed at fostering sustainable fisheries exploitation [24].

A Community action plan to address environmental challenges in the fisheries sector was introduced to complement these legislative reforms [34]. The plan presents key principles to guide environmental integration in Community fisheries, including precaution, prevention and the progressive implementation of an ecosystem-based approach (reflecting the key drivers of the conservation regulation) and identifies measures requiring priority management action to this end [34]. It is target-driven and includes a timetable for implementation. With regard to fishing beyond Community waters, it obliges the Community to demonstrate the same commitment to environmental integration in its external activities as internally and requires the Community to adopt a strategy that contributes towards global sustainable fishing [34]. A new strategy for the EC distant water fleet was subsequently introduced, the main components of which are being progressively implemented, as I discuss in greater detail below [24,35–37]. A further complementary ‘soft’ law instrument, the 2003 European Code of Sustainable and Responsible Fisheries Practices outlines guidelines to assist EU fishing operators in implementing sustainable fisheries practices [38].

The focus on environmental concerns and sustainability during the 2002 CFP review also prompted major changes in the policy’s structural sphere in response to the failure of earlier Community efforts to curtail subsidisation and prevent capacity expansion. In 1983, fleet reduction targets for member states to be implemented via multi-annual guidance plans (MAGPs) were introduced, but had proved largely inefficient [12,23,24]. These were replaced by new ‘reference levels’ for national fishing fleets as articulated in the 2002 conservation policy. Member states are obliged to adjust their fishing capacity to these levels [33]. The new fisheries structural policy aims to pro-actively tackle over-capacity, with the goal of achieving a balance between the Community fleet’s capacity and available fishing opportunities. Its main contribution towards this goal is to re-direct funding away from fleet modernisation towards various structural measures [39,40]. Over-capacity is nevertheless identified as one of the leading causes of the continuous decline of fish stocks in Community waters [11,19,20]. Its persistence also adversely effects progress towards sustainable fishing in third country waters, providing an incentive for the Community to continue subsidising its vessels fishing in foreign (largely developing country) waters, compounding existing over-exploitation problems [20,41].

Historically, few coastal states claimed jurisdiction over living marine resources in zones beyond 12 nautical miles from their baselines and distant water fleets were thus free to fish in coastal waters from this boundary. Distant water fishing nations nevertheless concluded numerous access

arrangements with coastal states mainly to secure logistical support for their nearby fishing operations [42,43]. Freedom to access coastal waters became increasingly restricted, however, from around 1976, when coastal states began to unilaterally declare jurisdictions over their respective marine resources beyond 12 nautical miles, with many claiming zones up to 200 nautical miles from their baselines. This tendency was fuelled by the convening of UNCLOS III in 1973 as a key topic of the negotiations was the desire of developing states to claim ownership over their coastal marine resources to secure economic benefits; the unilaterally claimed fishing zones were thus largely modelled on the expected outcome of the negotiations. Increasingly barred from freely fishing in their traditional coastal fishing grounds, distant water fishing fleets thus began to negotiate access agreements with coastal states as the majority of commercially exploitable marine fish stocks are found within 200 nautical miles of the coast [42].

The EEC thus began to conclude bilateral fisheries agreements with coastal states from the mid-1970s onwards to ensure continued access to fisheries resources as well as to secure employment opportunities for its citizens, alleviate fleet over-capacity and meet the European market’s increasing demand for fish [43–46]. The first such agreement was signed with the United States of America in 1977.

### 3. The EU’s external fishing policy regarding developing third countries

The EU has since concluded numerous bilateral fisheries agreements with third countries.<sup>8</sup> These agreements are shaped by the Community’s fisheries policy, which (as noted above) obliges the Community to promote sustainability and to comply with international conservation and sustainable development commitments. In practice, however, the agreements that it has concluded with many developing coastal countries have historically failed to satisfactorily promote these objectives.

Fisheries access agreements are regulated by UNCLOS. The convention grants coastal states an exclusive economic zone, or EEZ in the 200 nautical mile zone off their coasts. They are however obliged to promote the conservation and sustainable use of fisheries resources within these waters by (amongst other things) determining their TAC. Coastal states that lack the capacity to fully harvest their TACs are further required to grant other states reasonable, negotiated access to surplus stocks via agreement [47]. ‘[A]ll relevant factors’ must be taken into account in determining terms and conditions of access, including the economic

<sup>8</sup>Most agreements are with developing coastal states, particularly in West Africa such as Côte D’Ivoire, Gabon, Guinea, Guinea Bissau, Mauritania and Morocco; agreements with other countries include Greenland, the Faroe Islands, Iceland and Norway. For up to date information on these and other EU bilateral fisheries agreements, see <[http://ec.europa.eu/fisheries/cfp/external\\_relations/bilateral\\_agreements\\_en.htm](http://ec.europa.eu/fisheries/cfp/external_relations/bilateral_agreements_en.htm)> (accessed April 2007).



significance of the fisheries to the coastal state's economy as well as its impact on the state's 'other national interests' [47]. This reflects the socio-economic and cultural importance of fisheries in many developing coastal states and the potential role that access agreements can play in fostering their sustainable development [48]. If coastal states permit foreign vessels into their waters they must ensure the latter's compliance with domestic fisheries conservation and regulatory measures. Means such as licences, specified target species and catch quotas, the regulation of vessel and gear type, size and number and catch-landing requirements can be used towards this end [47].

The obligation to determine and declare a surplus lies with the coastal state in question; foreign states seeking access to coastal fisheries have no duty to independently assess the existence (or not) of a surplus or to query the validity of a declared surplus. The temptation to declare a surplus despite uncertainty as to its existence to procure short-term economic benefits is thus present. There has been criticism that the EU has concluded agreements under such circumstances in the past [44,46]. In 1997, the Council's Committee on Fisheries thus suggested that the Community should assist those developing coastal states whose fisheries it sought to access to enhance their stock evaluation capacity and that where necessary, it should undertake an independent stock assessment of the states' coastal fisheries [46,49]. The Commission subsequently suggested that the Community should participate through regional fisheries organisations in stock evaluations of developing third countries before concluding bilateral fisheries agreements with them and that it should conduct sustainability impact assessments of such proposed agreements; this was echoed in its subsequent communication on fisheries partnership agreements [24,36]. Furthermore, the Community and member states should jointly invest with developing third countries in developing their stock assessment capacity, in accordance with obligations imposed by the FAO Code of Conduct [50,51]. The new fisheries partnership approach, which I discuss below in detail, incorporates many of these proposals.

Most of the EU's current bilateral fisheries access arrangements can be classified as 'ordinary' international agreements as they are concluded between state parties and are available for public access. Most are 'first generation' agreements in terms of which coastal states grant access to the Community fleet in exchange for financial compensation.<sup>9</sup> The Community has traditionally subsidised up to

80% of access costs, with European ship-owners paying the remainder which comprises licence fees [44,46,55]. These types of agreements are concluded almost exclusively with developing coastal states and all of the EU's bilateral fisheries agreements with African states fall into this category [46,49,55].

In the past the Community's conclusion of agreements was not guided by a comprehensive policy; negotiations were conducted on an ad-hoc, case-by-case basis within the general framework of the CFP. Minimum effort was made to incorporate sustainability concerns into the agreements, highlighting a discrepancy between the Community's commitment to sustainable fishing in its own waters and that in waters beyond its jurisdiction [23,44,53,56]. The Community acknowledged the need to redress this deficiency during the 2002 CFP review; specifically, it accepted that its future bilateral fisheries agreements should better promote the establishment and development of sustainable fisheries policies and practices in developing third countries. A new framework 'cooperative partnership' approach was suggested towards these ends aimed at ensuring the conservation and sustainable exploitation of fish stocks via the use of effective catch controls, vessel and fishing effort limitation and the implementation of technical conservation measures based on sound scientific advice and a precautionary approach [23,24]. It is rooted in the ideals of greater coherence between access agreements and internal policies such as development cooperation, environment and trade. In particular, the Community's express aim is to ensure that the agreements accord with its development policy and act as a 'development vector' in the fisheries sectors of the third countries by, for example, providing technical support to strengthen local fisheries management capacities, promoting cooperation in research, stock assessment, monitoring and surveillance, encouraging the rehabilitation of marine ecosystems and minimising wasteful fisheries practices [23]. The instruments to translate this into practice are cooperative fisheries 'partnership' agreements, which will be negotiated between the Community and developing third countries as part of an enhanced policy dialogue between the parties aimed at promoting sustainable fishing. Specifically, the dialogue will be geared towards developing a sound fisheries management policy for the third country [24]. The fisheries partnership agreement will (if successfully negotiated) serve as the means to ensure the progressive development and implementation of this policy with the EU providing the necessary financial, technological and scientific assistance towards this end in return for access to domestic coastal stocks.

The broad policy ideals were further refined in 2004 in a suite of proposed Council Conclusions, which outline procedural mechanisms to guide the Commission in its

<sup>9</sup>The remaining minority are concluded between coastal state governments and foreign private enterprises and are private contractual agreements which are not published; they are thus 'closed' agreements. Inter-governmental multi-lateral fisheries agreements also exist, such as those concluded between the United States of America and the Pacific Island Countries. Other common types of access agreements include reciprocal agreements, involving the exchange of equivalent fishing rights between the EC fleet and the fleet of the third country (Norway, the Faroe Islands and Iceland and the Baltic States), and 'second generation' agreements in terms of which access to markets is secured through the

(footnote continued)

establishment of joint ventures ([36], para 1, [53], p. 1, [54], pp. 366–7, [55], para 1).

fisheries partnership interactions. Significantly, they suggest that impact assessments of the potential environmental, and socio-economic consequences of fisheries partnership agreements should be conducted prior to agreement negotiations [37]. As of 2006, the Community has conducted such assessments for proposed fisheries arrangements with West African coastal states.<sup>10</sup> Section 6 further recommends the establishment of a bilateral fisheries committee with the partner state to advise on sustainable fishing opportunities during negotiations and the implementation of initiatives to ensure that the Community fleet promotes responsible fishing in the third country's waters. The negotiations 'proper' must be guided by CFP-based sustainability objectives as outlined in Section 6 including promoting the sustainable exploitation of surplus stocks in the third country's waters, improving scientific and technological knowledge of the fisheries in question (including the likely impact of fishing on the environment) and contributing towards domestic sustainable fisheries management efforts. Regarding the content of the agreements: they should define the EU's fishing opportunities, make adequate provision for the funding and development of local fisheries (including regular supervision and follow-up) and outline procedures for the implementation, monitoring and review of the agreement [37].

A distinguishing feature of the new partnership approach is the justification for and scope of the EU's financial compensation. Specifically, the financial contribution must correspond with the fishing opportunities available to the EU (to be topped up by access fees paid by vessel owners) together with the monetary support necessary to operationalise the coastal state's sustainable fisheries management policy. Regarding the latter, payments will be channelled to specified local 'partnership activities' such as improved fisheries control and monitoring and the conducting of scientific stock assessments [36,57]. Funding will cover both the initial set-up costs as well as those necessary for their follow-up and evaluation of the activities.

In an attempt to diminish the Community's subsidisation of its distant water fleet, the new policy requires Community vessel owners to increasingly bear the burden of access costs to foreign coastal waters by paying a larger percentage of the vessel licensing fees [44]. At the same time, however, the Community regards fisheries partnership agreements as an appropriate mechanism to facilitate the 'permanent transfer' of vessels to third countries in the context of 'joint enterprises', which aim to reduce EU fishing capacity while simultaneously contributing to sustainable socio-economic development in the respective coastal states [36,39,40,49]. There is some scepticism, however, as to the extent to which joint ventures are

genuinely conducive to promoting sustainable fisheries objectives.

The new policy further emphasises the need to 'step up' the EU's management, control and follow-up of its fleets' foreign fishing activities to be achieved by the inclusion of specific measures towards these ends in fisheries partnership agreements such as the provision of Community funds to establish joint control, monitoring and surveillance activities with developing third countries [36,37]. One of the tasks of the recently established Joint Community Fisheries Control Agency is to assist member states in complying with their control and inspection obligations in terms of their fisheries partnership agreements [58].

#### 4. The need for a change in policy

The need for a change in the EU's fishing policy towards developing third countries is well illustrated by way of reference to past agreements between the EU and Senegal, which had an overall adverse effect on the sustainability of Senegal's coastal fisheries. The example is apt as Senegal was the first African country to conclude a bilateral fisheries agreement with the EU; the agreement was renewed over the years until 2006. There is thus a strong tradition of legitimated Community fishing in Senegalese waters. The agreements have, however, attracted significant criticism for their alleged adverse impacts on the state of Senegalese fish stocks and the domestic fishing industry. Questions of sustainability lie at the heart of these criticisms.

By way of background, the EU enjoys access to fish stocks along most of the West African coast. Access is sanctioned in terms of bilateral fisheries agreements with various coastal states, such as Morocco, Mauritania, Guinea, Guinea-Bissau, Côte D'Ivoire and, until 2006, Senegal. The EU fleet has traditionally targeted small coastal pelagic species (which dominate fish stocks in this region) as well as commercially valuable highly migratory large pelagics such as yellowfin tuna, bigeye tuna and swordfish, which move down from the north through the EEZs of various coastal states in the region, as well as further off-shore. Fish is key to the diet, culture and economy of most West African states, which have lower-middle or low income status. Domestic fishing (particularly the artisanal fishing sector) contributes significantly to regional food security and national employment and fisheries exports provide a valuable source of foreign exchange earnings [59,60]. Fisheries agreements are negotiated between the EU and the various coastal states on an individual, bilateral basis. As most of the species targeted by the EU fleet are found along the entire West African coast, the Community has enjoyed considerable negotiating power. Various commentators and NGOs thus advocate enhanced regional cooperation among West African coastal states to better foster sustainable fisheries management both domestically and regionally through

<sup>10</sup>For example, the Community prepared an impact assessment for the proposed new fisheries access agreement with Senegal; the negotiations failed, however, and no new agreement was signed.

improved generation and flow of fisheries data and enhanced monitoring, control and surveillance [53].

The 2002–2006 EU–Senegal agreement, while crafted under the old external fisheries policy, was clearly influenced by the policy changes abound at that time. It nevertheless advanced the goal of sustainable fishing minimally, as I discuss below. Bilateral fisheries agreements concluded after the introduction of the EU's new fisheries partnership policy (such as that with Morocco), however, are classified as fisheries partnership agreements. Their contents reflect a renewed emphasis on sustainable fishing, as promoted in the policy and arguably hold out the promise of greater, more tangible strides forward towards these goals.

The first bilateral fisheries agreement between the EU and Senegal was signed in 1979 and was subsequently renewed seven times. Various of the agreements included provisions aimed at promoting sustainable fishing, such as technical conservation measures (for example, minimum authorised net size) and the demarcation of permitted EU fishing zones. In addition, EU vessel owners were required to employ a certain percentage of local crew members on board [53]. These measures were, however, unable to prevent the decline of certain coastal demersal stocks and to stimulate the socio-economic development of Senegalese fisheries; they were inadequate and poorly implemented, problems that were compounded by inappropriate domestic policies. The most recent agreement between the parties, operating from 1 July 2002 to 30 June 2006 at a total cost to the EU of €64 million, earmarked 19% of the total cost (€12 million) for dedicated 'partnership' measures aimed at addressing these deficiencies by stimulating the 'development of sustainable and responsible fishing in [the parties'] mutual interest'. Reflecting the financial arrangements of the new fisheries partnership agreements by expressly distinguishing between financial compensation in return for Community fishing opportunities and 'partnership' activity payments, the agreement bound the EU to pay €16 million to the Senegalese government annually, of which €13 million was to be paid to the Public Treasury and €3 million was for 'partnership' activities [61]. Specifically, the agreement obliged the parties to establish a 'partnership' to support various listed fisheries development activities in Senegal, namely 'resource monitoring and evaluation of stocks' (comprising research, participation in exchange of information and regional coordination networks), improved fisheries inspection and monitoring (including the installation of vessel monitoring systems (VMS) in Senegalese fishing vessels), improved safety of local small-scale fisheries, institutional support 'for establishing sustainable fishing' and improvement of fisheries skills. The EU's annual contribution to each activity was cited. Furthermore, €100,000 was set aside for the annual evaluation and auditing of these activities. The Senegalese Minister of Fisheries enjoyed significant scope in deciding how to distribute the finances to realise the partnership activities but was required to notify the EU of the contents

of his or her 'action programme' and to deliver a detailed annual report on its implementation. The EU was entitled to 'review' its payments to Senegal in light of 'actual implementation' of the measures although a benchmark for determining 'actual implementation' was not outlined [61].

In return for financial benefits, approximately 125 EU vessels originating from Spain, Portugal, France, Italy and Greece enjoyed access to Senegalese coastal waters to fish tuna, in-shore demersal fish and cephalopods, and deep sea demersal fish and crustaceans. Specifically, the agreement granted access to 77 tuna vessels (16 pole-and-line tuna vessels, 39 freezer seiners and 23 surface longliners); the remaining figure of 48 vessels is based on an estimate of the amount of vessels fishing under categories limited by gross registered tonnage (GRT) only [62]. The annual average cost of the agreement per vessel was €128,000, with benefiting vessel owners covered only a fraction of this cost. Fees for tuna vessels were particularly noteworthy as they were comparatively low in relation to tuna's potentially high commercial value [44,62].

The agreement included various resource management measures potentially aimed at sustainable fishing and sustainable local fisheries development. Research revealed however that many of these provisions were included primarily for reasons of political diplomacy, with little expectation of their effective realisation; this was confirmed by their frequently problematic implementation [63].

Firstly, the agreement provided for the declaration of a biological rest period, empowering the Senegalese government to ban EU demersal trawlers from fishing for certain species for a specified period in the interest of sustainable fishing [61]. This attracted a commensurate adjustment in the level of the EU's financial contribution 'where appropriate', however, arguably discouraging the Senegalese authorities from instituting such measures.

Secondly, the stock evaluation provisions contained in article 3 appeared at first glance to be far-reaching in their efforts to promote sustainable fishing, binding the parties to 'make every effort' to jointly monitor the state of Senegalese resources throughout the operation of the agreement and to take appropriate measures to ensure their sustainable management. Management measures could be taken by common agreement to this end based on the findings of a joint scientific meeting [61]. Should these measures require a reduction of the EC's fishing opportunities, however, an 'adjustment' in the Community's financial compensation would once again follow. The decision to impose such measures was thus (unsurprisingly) never taken [64].

The agreement, thirdly, specified Community by-catch limitations for various species, ranging from 2% to 10% of permitted catches. By-catch was to be calculated at the end of each voyage with reference to the total catch weight, in accordance with Senegalese law. Detailed provisions were also included requiring the compulsory landing of parts of the Community catch in Senegalese ports. The amounts differed according to the type of vessel and the species

targeted, ranging from 150 to 250 kg of fish and shrimp per GRT bi-annually ([61], arts C, K). Landing requirements for tuna vessels were listed separately [61].

Finally, the agreement specified zones in which the various types of EU vessels were permitted to fish. These had been reduced from past agreements to ensure greater protection of the Senegalese artisanal fleet and the regulation of the various zones was far more detailed than previously. In-shore trawling was still permitted, however—smaller trawlers targeting fish and cephalopods (up to 250 GRT) were able to harvest from just six nautical miles off the coast and there were no zonal limits for pole-and-line tuna vessels and tuna seiners, entitling them to harvest tuna anywhere in Senegalese waters ([61], art G). The fishing grounds for ocean-going trawlers (demersal fishing for deep-water shrimp and hake) had increased, arguably encouraging increased catches given that catch limits were not specified [62].

In addition to the above management measures aimed at sustainability, the agreement also included various obligations on vessel owners regarding monitoring and control, technical inspections and the constitution of their crew, including an obligation on EU vessels to notify the Senegalese authorities each time they entered or departed from Senegalese waters and to forward their catch statements to the Senegalese authorities at the conclusion of each fishing trip [61]. EU vessel owners were further obliged to take observers designated by the Senegalese authorities on board to promote compliance with the agreement and domestic fisheries law. On freezer tuna seiners or tuna pole-and-line vessels, observers were elected from among the Senegalese crew members, potentially jeopardising independence [61]. Community trawlers were required to undergo technical inspections annually and in the event of a change in their tonnage or fishing category to ensure (inter alia) compliance with the required quota of Senegalese crew-owners of Community trawlers, bottom longliners and surface longliners fishing were required to employ a crew comprising 50% Senegalese nationals [61].

Analysis of the agreement indicates that it explicitly attempts to promote sustainable Senegalese fisheries development better than previous agreements. For the first time, relatively substantial amounts were earmarked for targeted measures to this end; however, the amounts were arguably comparatively low as a percentage of the total financial package [61]. Furthermore, research revealed that operationalisation of the ‘targeted action’ (or ‘partnership’ measures) provisions was highly problematic for both parties; their inclusion in the agreement thus did not noticeably result in enhanced domestic sustainable fisheries development [64,65]. Overall, the resource management measures of the agreement were an improvement on those under the previous agreement. In particular, the biological rest-period provision was potentially more effective than that under the previous agreement—it had been broadened to include coastal species, thereby potentially protecting over-fished demersals, (under the last agreement only deep-

water species were protected) and permitted a ban for up to three months annually (as opposed to two months previously) [61]. The implementation of these provisions had not been without difficulty, however, with rest periods declared and altered without due notice to the EU [64]. A further noticeable improvement was the considerable reduction of the EU’s fishing possibilities in coastal demersal stocks (around 30%) and the exclusion of the pelagic sector from EU fishing opportunities, together with a reduction of permitted by-catch percentages, potentially benefitting the sustainability of local artisanal fisheries. A major resource management weakness of the agreement, however, was that it failed to establish maximum EU catch or effort limits thereby perpetuating the deficiency of the past agreement [61]. Instead, it continued to regulate the Community’s permitted output via GRT, a contentious method that is commonly used in the EU’s bilateral fisheries agreements with certain West African coastal states [61]. Critics argue that it is a weak method of ensuring the biological sustainability of targeted stocks and that it contrasts sharply with the TAC method used by the EU in its own waters [53,62]. While TACs alone do not guarantee sustainable fishing, they establish fixed catch limits and if effectively enforced and used in combination with other resource management measures such as input controls can positively contribute towards this goal. This compounded the problematic nature of the measures providing for a possible decrease in EU fishing opportunities—not only did they fail to indicate what is considered a ‘sustainable level’ of a fish stock and accordingly, when EU fishing opportunities might justifiably be reduced, but they provided that Community compensation would accordingly be ‘adjusted’, operating as a disincentive for Senegalese authorities to respond to stock depletion by reducing catch opportunities [62].

The high percentage of local crew that the agreement required EU vessel owners to employ and the increased local catch-landing obligations on the Community fleet were also positive developments with the potential to contribute towards development in the local fishing sector. Arguably, however, even greater catch-landing obligations should have been imposed, combined with an increase in funds channelled by the Senegalese government and the EU into value-added activities in local processing plants to enhance the value of exported fisheries products [66]. With regard to monitoring and surveillance provisions, while funds were dedicated to ‘partnership’ activities towards improved domestic monitoring and control capacity and EU vessels were obliged to take Senegalese-designated observers on board, the asymmetry between the sophistication of the Community fleet and Senegalese monitoring and enforcement capacity, together with the independence problem of certain observers (noted above), weakened the efficacy of these provisions. Specifically, national Senegalese authorities are under-equipped to effectively control all fishing activities in the Senegalese EEZ. In particular, they lack the capacity to track VMS effectively [53,65].



## 5. The way forward

The EU has begun to implement its new fisheries partnership agreement approach in the context of its bilateral fisheries relations in West Africa. A number of recently concluded fisheries agreements illustrate this, such as the most recent arrangement with Morocco, which is expressly cited as a fisheries partnership agreement. Accordingly, it attempts to significantly further infuse sustainable fisheries concerns into the EU's bilateral fisheries relations with this particular developing coastal state. Covering the period of 1 March 2006 to 28 February 2010, the agreement is explicitly rooted in the new external fisheries policy, allocating defined numbers of licences to the various member states of the EU fishing fleet for demersal, pelagic and tuna species and requiring that fishing opportunities be conducted in 'full accordance' with article 20 of the 2002 CFP conservation regulation (discussed above) [67]. A fixed number of licences is allocated to the various member states for the listed targeted species. An exception, however, is industrial fishing for pelagic species: here, opportunities are allocated in the basis of permitted GRT, a potentially problematic system as discussed earlier in the context of Senegal.

The agreement replaces a previous arrangement between the parties in force between 1995 and 1999 in terms of which some 500–600 EU vessels were permitted to fish a variety of species in the Moroccan coastal waters, including shrimp, cephalopods, hake, tuna and various pelagics [67]. Fishing opportunities were allocated to set numbers of vessels annually, with provision for the progressive reduction of fishing opportunities over the four years. In terms of the agreement, €500 million was paid to Morocco by the EU; a total of €145 was allocated for promoting scientific research, cooperation and training in the fisheries sector.<sup>11</sup> Like various other West African fisheries agreements with the EU, it came under significant criticism for granting the Community fleet access to certain over-exploited stocks along the African coast. Attempts to renegotiate the agreement at its conclusion failed, ending in February 2001; on 26 March 2001, the parties formally announced their inability to reach consensus. In particular, the parties struggled to reach agreement on the fishing possibilities for a new arrangement with regard to both the number of vessels and the conditions of their access (specifically relating to obligatory landings, fishing zones, gear and biological rest periods), most noticeably, in relation to the key commercial fisheries of cephalopods and shrimps. Associated problems arose regarding agreement on financial compensation for reduced access to Moroccan fisheries stocks. Negotiations were revived following the operationalisation of the EU's new fisheries

partnership approach and progressed to conclusion guided by this new policy.

Under the current fisheries partnership agreement, annual compensation from the EU amounts to €36.1 million. €13.5 million of this is earmarked for the development and implementation of Morocco's fisheries policy aimed at ensuring the long-term future of fishing in its waters. This includes measures to support the modernisation and restructuring of Morocco's coastal fleet, cushion the impact of the withdrawal of driftnets on the fleets concerned, enhance scientific research and training, modernise the marketing and promotion structures for fisheries products, upgrade the landing and handling of fisheries products and finance fisheries-related training programmes. It is however too early at this point to determine the extent to which the operationalisation of the agreement and these provisions in particular will genuinely advance sustainable fishing and local sustainable fisheries development.

## 6. Conclusion

Achieving the goal of sustainability is a key concern of modern marine fisheries management worldwide. This article focuses on how the EU proposes advancing sustainability in the context of the Community's bilateral fisheries relations with developing third coastal states by introducing the EU's new fisheries partnership approach. The Community's past agreement with Senegal highlights that the time was ripe for the EU to introduce such a new approach, particularly in the context of West Africa. Comprehensive analysis of new fisheries partnership agreements with certain West African states is required to ascertain the extent to which the ideals of the fisheries partnership agreement policy are translated into practice and thus whether the EU's new approach is likely to advance the objective of sustainable fishing significantly or not.

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<sup>11</sup> Broken down as follows: €121 million for co-operation in the fisheries sector, €16 million for scientific research on marine living resources, and €8 million for training.

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